

REMARKS

Introduction

The above amendments and these remarks are responsive to the Office action mailed on October 10, 2006. Claims 1-56 are currently pending in the application, with claims 1-13 and 41-56 withdrawn from consideration. Examined claims 14-40 stand rejected under 35 USC §102(b) as anticipated by U.S. Patent Application Pub. No. US2002/0130804A1 ("McMakin").

In this response, claims 14, 15, 28, 29, and 36 are amended to more particularly recite the subject matter for which applicants seek protection. No new matter is entered by way of these amendments.

Applicants respectfully traverse the rejections, and presents explanatory remarks below. In view of the amendments and the remarks, applicants request reconsideration of the application under 37 C.F.R. § 1.111 and allowance of the pending claims.

McMakin Fails to Anticipate the Pending Claims

The Office action asserts on pages 2-4 that McMakin anticipates the pending claims. To anticipate a claim under 35 U.S.C. §102(b), each and every element as set forth in the claim must be found in a single prior art reference. *See, e.g., Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). However, McMakin fails to disclose at least one element of each of the independent claims, and, by extension, all of the pending claims. As such, the rejections are improper.

McMakin discloses electromagnetic interrogation of a body B positioned on a platform 32 that rotates relative to a vertically oriented sensing array 36 (Fig. 1; [0028]).

As the platform rotates, a number of separate interrogation subroutines 130 are performed, each generating a data set corresponding to a different vertical portion of body B. (Fig. 3; [0040]). The individual data sets are processed to produce corresponding image data sets, which are then assembled to create a topographic representation of the interrogated body B.

Each interrogation subroutine 130 is assigned an integer value referred to as the interrogation index “I.” Thus, each value of “I,” and each image data set, corresponds to a data set representative of a different vertical portion of body B (see, e.g., [0047] (“...each of the interrogation data sets corresponds to a general vertical portion of body B”); see also [0040], [0044], [0052], and [0053]).

The Office action asserts that each subroutine takes place at a different time (for example, when the interrogation index “I” equals 1, 2, etc.), but the McMakin disclosure only indicates that the different values of the interrogation index “I” correspond to subroutines that each interrogate a different body portion. Thus, regardless of whether the individual subroutines are performed at the same time or at different times, each subroutine interrogates a *different* portion of body B, and therefore, different features of body B.

In other words, McMakin does not disclose interrogating a portion of body B, or any given feature of the interrogated subject, more than once (or at two or more different times).

However, independent claim 14 recites, in part, “first interrogating a given feature of a subject” and “second interrogating the given feature of the subject at a second time

different than the first time.” Claim 14 further recites generating data sets representative of a given feature of the subject for each interrogating of the given feature.

Because McMakin does not disclose interrogating any portion of body B more than once, or generating separate data sets from interrogating a given feature at different times, it cannot anticipate claim 14 or any of its dependencies.

Analogously, independent claim 29 recites, in part, apparatus adapted to interrogate a given feature of a subject at different times, and a controller adapted to generate a separate data set each time the subject is interrogated and to identify from each separate data set information corresponding to the given feature. Again, because McMakin does not disclose interrogating any portion of body B more than once, it cannot anticipate claim 29 or any of its dependencies.

Finally, independent claim 36 recites interrogating a given feature of a subject at different times, generating a separate data set from each interrogating, and identifying from each separate data set information corresponding to the given feature. McMakin thus fails to anticipate claim 36 and its dependencies.

For at least the aforementioned reasons, the reference cited in the Office action fails to disclose all of the elements of the pending independent claims, and by extension, their dependencies. As such, the rejections of the pending claims on this are improper. On this basis, applicants respectfully requests withdrawal of the rejections and allowance of the pending claims.

Additionally, there is no motivation disclosed or suggested in McMakin to interrogate a feature of a subject at different times. McMakin discusses many possible applications of the disclosed interrogation process in paragraphs [0073] through [0081], including clothing design, security applications, personnel identification, customization of equipment to an individual, and so forth. However, none involve or even suggest interrogation of a given feature of a subject at different times, or identification of data from data sets generated by a number of different interrogations of a given feature, as recited in the claims.

Applicants further note that the Office action, in reference to dependent claim 19, asserts that McMakin “teaches comparing the information identified” (Office action, page 3). Paragraph [0077] of McMakin is cited in support of this assertion, but this paragraph refers to comparing information from a single interrogation of an individual to a separate database of “information for known terrorists,” rather than comparing information from first and second interrogations of a given feature of a subject (as recited in the claim).

In sum, any proposed modification of the McMakin reference to reach the subject matter of the claims would be impermissible hindsight reasoning based entirely on knowledge only gleaned from applicants’s disclosure, because no such teaching, motivation, or suggestion to modify can be found in McMakin.

Conclusion

Applicants believe that this application is now in condition for allowance, in view of the above amendments and remarks. Accordingly, applicants respectfully request that the Examiner issue a Notice of Allowance covering the pending claims. If any

issues remain, or if a telephone interview would in any way advance prosecution of the application, the Examiner is requested to contact the undersigned attorney of record.

Respectfully submitted,

KOLISCH HARTWELL, P.C.

A handwritten signature in black ink, appearing to read 'Timothy M. Whalen', is written over a horizontal line.

Timothy M. Whalen

Registration No. 58,467

Customer No. 23581

Of Attorneys for Applicants

520 S.W. Yamhill Street, Suite 200

Portland, Oregon 97204

Telephone: (503) 224-6655

Facsimile: (503) 295-6679